

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CARL SCAGGS and NELLIE SCAGGS,)
Plaintiffs,)
v.) Cause No. 4:08-CV-01163 ERW
3M COMPANY, AS SUCCESSOR BY)
MERGER TO MINNESOTA MINING &)
MANUFACTURING COMPANY AND/OR)
ITS PREDECESSORS/SUCCESSORS IN)
INTEREST)
and)
MINE SAFETY APPLIANCES,)
Defendants.)

**DEFENDANT MINE SAFETY APPLIANCES COMPANY'S
EMERGENCY MOTION TO QUASH DEPOSITION OF DR. JOSEPH M. OJILE**

COMES NOW, Defendant Mine Safety Appliances Company ("MSA") by and through its attorneys, Lashly & Baer, P.C., and for its Emergency Motion to Quash Deposition of Dr. Joseph M. Ojile pursuant to F.R.C.P. 26(c)(1) states as follows:

1. This is a personal injury case in which the plaintiff claims that he developed the occupational lung disease of silicosis.
2. In connection with his alleged silicosis, the plaintiff treated with Dr. Joseph M. Ojile, a pulmonologist.
3. On or about February 3, 2010, counsel for the plaintiff represented to counsel for the defendants that he would contact Dr. Ojile to obtain dates upon which the doctor would be available for his deposition. Plaintiffs' counsel also represented that he would share those dates

with counsel for the defendants and that the deposition would be noticed at a mutually agreeable time and date.

4. Between February 3, 2010 and March 30, 2010, counsel for MSA, via email and in telephone conversations with counsel for the plaintiff, requested that counsel for the plaintiff contact Dr. Ojile for deposition dates. *See Exhibit 1.*

5. On March 30, 2010, counsel for plaintiff served a notice of Dr. Ojile's deposition for April 8, 2010 without consulting with counsel for MSA as to their availability. *See Exhibit 2.*

6. The attorneys representing MSA with the most familiarity with the issues associated with Dr. Ojile's deposition are W. Jeffrey Muskopf (lead counsel) and Michael J. Smith. Both attended the plaintiff's deposition. Because of the significance of Dr. Ojile's deposition, one of these attorneys must attend. Neither are available on April 7, 2010 to attend the deposition. Mr. Muskopf will be in trial in the case of *Wagner v. Wagner*, Cause No. 09-D-59, pending in the Circuit Court of Monroe County, Illinois, and being tried in Randolph County, Illinois before the Honorable Richard Brown. Mr. Smith will be meeting with expert witnesses and preparing for a two-week jury trial set to begin on April 12, 2010 in the case of *Joseph Johnson v. Barnes Jewish Hospital*, Cause No. 0622-CC-006611, pending in St. Louis City, Missouri. Counsel for MSA has had a number of communications with counsel for the plaintiff trying to in good faith resolve this issue, but counsel for plaintiff refuses to reschedule the deposition. Attached as **Exhibit 3** are email communications to this effect. Attached as **Exhibit 4** is the Affidavit of W. Jeffrey Muskopf attesting to the facts set forth herein.

WHEREFORE, Defendant respectfully requests that the deposition of Dr. Ojile as noticed by Plaintiff be quashed and that the Court order the parties to reschedule the deposition

at a mutually agreeable time and date, and requests all such other and further relief to which it may be entitled.

Respectfully submitted,

/s/ W. Jeffrey Muskopf

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Sarah J. Hugg - #499126

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ATTORNEYS FOR DEFENDANT MINE
SAFETY APPLIANCES COMPANY

PROOF OF SERVICE

I hereby certify that on April 2, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following parties:

- Zane T. Cagle – zane@pagecagle.com
- John J. Kurowski - jkurowski@cateskurowski.com
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- W. Jeffrey Muskopf – jmuskopf@lashlybaer.com
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I have mailed a copy to the following parties:

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/s/ W. Jeffrey Muskopf